

**FEB 28 2006**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MIGUEL ANGEL MARTINEZ-  
DOMINGUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-72315

Agency No. A75-536-360

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted February 16, 2006  
San Francisco, California

Before: REINHARDT, PAEZ, and TALLMAN, Circuit Judges.

Petitioner Miguel Angel Martinez-Dominguez (“Martinez-Dominguez”), a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ final order of removal, which affirmed the Immigration Judge’s decision

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.



finding him removable under 8 U.S.C. § 1227(a)(2)(B)(i),<sup>1</sup> as an alien who has been convicted of a controlled substance offense.<sup>2</sup>

This court has jurisdiction to review Martinez-Dominguez's petition pursuant to 8 U.S.C. § 1252(a)(2)(D), as amended by the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B., § 106(a)(1)(A)(iii), 119 Stat. 231, 310 (2005). *See Notash v. Gonzales*, 427 F.3d 693, 695-96 (9th Cir. 2005).

Because Martinez-Dominguez's state conviction has not been expunged, he does not qualify for the benefits of the Federal First Offender Act. *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1290-91 (9th Cir. 2004). Accordingly, the petition for review is **DENIED**.

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<sup>1</sup>Section 1227(a)(2)(B)(i), provides that “[a]ny alien who at any time after admission has been convicted of a violation of . . . any law . . . relating to a controlled substance (as defined in section 802 of Title 21) . . . is deportable.”

<sup>2</sup>In 2003, Martinez-Dominguez was convicted of being under the influence of a controlled substance, methamphetamine, in violation of section 11550(a) of the California Health and Safety Code.